

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
MARITEL, INC. and)	WT Docket No. 04-257
MOBEX NETWORK SERVICES, LLC)	RM-10743
)	
Petitions for Rule Making to Amend the)	NPRM released 7-3-04
Commission's Rules to Provide Additional)	
Flexibility for AMTS and VHF Public Coast)	
Station Licensees)	

REPLY COMMENTS

Warren Havens ("Havens"), Telesaurus Holdings GB, LLC ("THL"), Telesaurus-VPC, LLC ("TVL") and AMTS Consortium, LLC ("ACL") (together, the "Parties") hereby submit reply comments regarding the above-captioned NPRM (the "Notice"). After review of Comments by other entities, the Parties submit the follow replies.

Havens holds licenses in both the Automated Maritime Telecommunications Service (AMTS) and VHF Public Coast Service (VPC). THL holds VPC licenses. TVL and ACL are each winning bidders and applicants for AMTS licenses from Auction no. 57. Havens is the President of THL, TVL, and ACL.

1. AMTS originated as a band focused on high-public interest service, namely, certain advanced "automated," "integrated" and "interconnected" service to maritime users where, more often than on land, safety of life and property is at risk and fewer communication alternatives exist. The Parties believe this focus should be maintained.

The Parties business plans focus on US public safety and critical infrastructure and have been summarized for years in many FCC dockets, including 92-257. They are pursuing this on a for-profit basis, and are in the process of converting a major part of their structure and

ownership to a nonprofit public-service basis. The Parties have spectrum nationwide for this purpose including AMTS, noted above, as well as ongoing technical development in software-defined multi-band multi-mode radios. The Parties proposed years ago that the FCC set aside AMTS not subject to valid licenses for US public safety and critical infrastructure. When the FCC did not do that, the Parties went to the FCC auction of AMTS, No. 57, and purchased the B block in all but one area of the US (the Great Lakes area).¹

The Parties are concerned about, and herein oppose, the extension of “flexibility” to incumbent licenses of parties who failed to demonstrate in Auction 57 capability and interest in long-term AMTS by buying the geographic license in the area and Block of their incumbent licenses. Such “flexibility” will not only be contrary to the “freeze in place (see below) but will also result in increasing the incidence of incumbent “squatting” on AMTS spectrum which will block the Parties, who did demonstrate such capability and interest, from using their AMTS spectrum for US public safety and critical infrastructure entities both on profit and nonprofit basis.

2. “Flexibility” is a form of expansion of a license, and it should not be extended to frozen incumbent AMTS licenses. A license is not only the spectrum and geography involved, but is also what can and cannot be done with it. Extending “flexibility” is every bit as much of an expansion as adding more spectrum or geography.

Thus, the Parties hereby modify paragraph 2 of their Comments as follows: The changes proposed in the Notice to Sections 80.123, 80.475(c), and 20.9 of the Commission’s Rules, as

¹ Paging System Inc., asserting that it is also speaking for Mobex, filed after the Auction a request to Stay processing of the Auction 57 long form applications, and a request to reconsider and grant Mobex’s pre-auction request to bar the Parties from Auction 57, which request the Commission had denied. These attempts are frivolous and an abuse of process. They are the last in the years-long anti-competitive behavior of Mobex and PSI to squat on AMTS spectrum and keep others out of AMTS by means that violate FCC rules and fair business practice.

they are discussed in ¶8, page 5 of the *Notice*, and the other changes and clarifications proposed in the Parties' Comments (together herein, the "Changes"), should be extended and apply *only to auctioned geographic AMTS and VPC licenses*.

PSI incorrectly makes an analogy between their frozen incumbent AMTS licenses and VPC licenses which are all geographic auctioned licenses.² The Changes should be provided to VPC and AMTS geographic licenses, and not to frozen AMTS incumbent stations.

It is inconsistent with Commission auction policies, AMTS rules, past AMTS decisions against the Parties, and the "freeze" on AMTS licensing imposed years ago, to grant additional "flexibility" which translates into increased viability and value, to site-based AMTS licenses. In the Fifth Report and Order in docket 92-257, the Commission, in preparation for the planned auction-based licensing of AMTS, explained and affected a freeze on new and expanded AMTS licensing, and that, well short of extending flexibility, it was not going to apply existing rules and means it had under a relevant Communications Act section to grant any flexibility or leeway to parties seeking licenses under the existing licensing regime.³ For the same reason, and to be

² Maritel had incumbent VPC licenses, but only in areas they also hold geographic licenses. Maritel deconstructed their incumbent licenses, according to their request for an extension of the five-year construction milestone for their geographic licenses. Inland incumbent stations using VPC spectrum are on a Part 90 basis, not subject to AMTS Part 80 rules and this proceeding.

³ The Commission wrote in its *Report and Order*, In the Matter of Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands WT Docket No. 02 – 8, RM-9267, RM-9692, RM-9797, RM-9854, RM-9882, FCC 02-152, Released: May 24, 2002 (underlining added):

31. Background. The Balanced Budget Act of 1997 revised the Commission's auction authority.⁹⁷ Specifically, it amended Section 309(j) of the Act to require the Commission to grant licenses through the use of competitive bidding when mutually exclusive applications for initial licenses are filed, unless certain specific statutory exemptions apply.⁹⁸ The BBA-97 also added to Section 309(j)(1) a reference to the Commission's obligation under Section 309(j)(6)(E) to use engineering solutions, negotiation, threshold qualifications, service regulations, or other means to avoid mutual exclusivity where it is in the public interest to do so.⁹⁹

equitable to the Parties who suffered under the just-stated hard stance, the Commission should not now extend relief to licensees who failed to participate in the Commission chosen auction licensing regime. Granting increased “flexibility” to site-based licensees as proposed in the Notice to site-based AMTS has fundamentally the same affect as granting additional spectrum or territory to them: in each case, whatever is granted to the incumbent diminishes what is left for the geographic licensee.

The idea of auctions, and the freeze before an auction, is to encourage serious parties to demonstrate their actual capability and interest to obtain and use the spectrum for the public interest by competing and becoming a high bidder in the auction. As in most services subject to auction, in AMTS, under section 80.385(c), when an incumbent station is subject to termination or cancellation, it automatically reverts to the geographic license. Also, under Section 80.70(c), transfer of incumbent spectrum to the geographic licensee, in the same area for the same Block, is presumed in the public interest. In addition, in the Fifth Report and Order in docket 92-257, incumbent AMTS stations were frozen and they still are: they can not obtain additional spectrum and cannot increase their service and interference contours.

When the incumbent gets additional flexibility—especially the sort proposed in the Notice—it increases the chances that the incumbent will maintain the site-based licenses which encumber the geographic license. Mobex and Paging Systems Inc. (“PSI”) each had every

Nevertheless, the Commission specifically rejected the Parties arguments that it was in the public interest to employ Section 309(j)(6)(E) means to resolve (its alleged) mutual exclusivity between many applications of Havens with applications of Mobex. Rather, the Commission staff processed the Mobex applications sufficient to find geographic mutual exclusivity (although there was no service or interference contour rule in place by which mutual exclusivity could be determined by rule rather than staff subjectivity) but upon the same visual review refused to look for Section 1.934 threshold defects as called for under Section 309(j)(6)(E). Its “public interest” rationale for this was presented in the Fifth Report & Order in 92-257, in short, that since it had initially determined to use AMTS auctions, where licensing would be via new auction-licensing rules, it was in the public interest to not process the Havens applications under existing rules, even to determine Section 1.934 defects. Rather, the staff could process to determine of geographic mutual exclusivity (per undefined standards) since that would preserve the spectrum for licensing by auctions.

opportunity to demonstrate their capability and interest in long-term viable AMTS by qualifying for and competing in Auction 57. Mobex entirely failed, and PSI only qualified for and bought one license. Mobex and PSI also each attempted to block the Parties from competing in the Auction even though they had, respectively no and virtually no funds or interest in doing so.

Respectfully,

Warren Havens

For himself,

And as President of:

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